

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-17-0041
RULES 11.2, 11.3, 11.5 AND 11.7,)
RULES OF CRIMINAL PROCEDUR)
)
) **FILED 07/28/2017**
)
_____)

ORDER

**AMENDING RULES 11.2, 11.3, 11.5, AND 11.7,
ARIZONA RULES OF CRIMINAL PROCEDURE, ON AN EMERGENCY BASIS**

A petition having been filed proposing to amend Rules 11.2, 11.3, 11.5, and 11.7, Arizona Rules of Criminal Procedure, on an emergency basis, upon consideration,

IT IS ORDERED that Rules 11.2, 11.3, 11.5, and 11.7, Arizona Rules of Criminal Procedure, be amended on an emergency basis pursuant to Rule 28(G), Rules of the Supreme Court of Arizona, in accordance with the attachment hereto, effective August 9, 2017.

IT IS FURTHER ORDERED that the matter shall be opened for comment, with comments due October 11, 2017, in accordance with Rule 28(G), Rules of the Supreme Court of Arizona.

DATED this 28th day of July, 2017.

/s/
SCOTT BALES
Chief Justice

Arizona Supreme Court No. R-17-0041

Page 2 of 6

TO:

Rule 28 Distribution

David K Byers

ATTACHMENT*

Arizona Rules of Criminal Procedure

Rule 11.2. Motion to have defendant's mental condition examined

- a. **Motion for Rule 11 Examination.** At any time after an information or complaint is filed or indictment returned, any party may request in writing, or the court on its own motion may order, an examination to determine whether a defendant is competent to stand trial, or to investigate the defendant's mental condition at the time of the offense. The motion shall state the facts upon which the mental examination is sought. On the motion of or with the consent of the defendant, the court may order a screening examination for a guilty except insane plea pursuant to A.R.S. §§ 13-502 to be conducted by the mental health expert. In a capital case, the court shall order the defendant to undergo mental health examinations as required under A.R.S. § 13-703.02 and 13-703.03.
- b. **Medical and Criminal History Records.** All available medical and criminal history records shall be provided to the court within three days of filing the motion for use by the examining mental health expert.
- c. **Preliminary Examination.** The court may order that a preliminary examination be conducted pursuant to A.R.S. § 13-4503C to assist the court in determining if reasonable grounds exist to order further examination of the defendant.
- d. **Jurisdiction.** ~~Should any court determine that reasonable grounds exist for further competency hearings, the matter shall immediately transfer to the superior court for appointment of mental health experts;~~ Except if a limited jurisdiction court exercises jurisdiction over a competency hearing in a misdemeanor case as authorized by an administrative order of the presiding judge of the superior court in the county, the superior court has exclusive jurisdiction over all competency hearings.
- e. **If Defendant is Competent.** If any court determines that competence is not an issue, the matter shall be immediately set for trial.

Rule 11.3. Appointment of experts

- a. **Grounds for Appointment.** If the court determines that reasonable grounds for an examination exist, it shall appoint at least two mental health experts to examine the defendant and to testify regarding the defendant's mental condition. The court on its own

* Additions are shown in underline, and deletions are shown in ~~striketrough~~.

motion or upon motion of any party may order that one of the mental health experts be a physician specializing in psychiatry and licensed as provided in sub-section (b) of this rule.

b. Definition of Mental Health Expert. The term “mental health expert” shall mean:

- (1) Any physician who is licensed pursuant to Title 32, Chapter 13 and 17; or
- (2) Any psychologist who is licensed pursuant to Title 32, Chapter 19.1.

The mental health expert must be familiar with this state's competency standards and statutes and criminal and involuntary commitment statutes; familiar with the treatment, training and restoration programs that are available in this state; and approved by the court as meeting court developed guidelines. Guidelines shall include demonstration of experience in forensics matters, required attendance at a court-approved training program of not less than 16 hours and any continuing forensic education programs required by the court, and annual review criteria.

c. - g. [No changes in text.]

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Rule 11.5. Hearing and orders

a. Hearing. Within 30 days after the expert reports have been submitted to the court, the court shall hold a hearing to determine the defendant's competency. The parties may introduce other evidence regarding the defendant's mental condition, or by written stipulation, submit the matter on the experts' reports.

b. Orders. After the hearing:

- (1) If the court finds that the defendant is competent, proceedings shall continue without delay.
- (2) If the court determines that the defendant is incompetent and that there is no substantial probability that the defendant will become competent within 21 months of the date found incompetent, it may, upon request of any party,

(A) Release the defendant from custody and dismiss the charges without prejudice.

~~(i) Remand defendant to Department of Health Services to begin civil commitment proceedings pursuant to Title 36, Chapter 5;~~

~~(ii) Order appointment of a guardian pursuant to Title 14, Chapter 5;~~

~~(iii) Release the defendant from custody and dismiss the charges without prejudice.~~

(B) If the matter is heard in superior court, the court may:

(i) remand the defendant to an evaluating agency to begin civil commitment proceedings pursuant to Title 36, Chapter 5;

(ii) order the appointment of a guardian pursuant to Title 14, Chapter 5.

(C) If the court enters an order under (B)(i) or (ii) of this section, it may retain jurisdiction and enter further orders as specified in A.R.S. §13-4517 and A.R.S. §13-4518.

(3) If the superior court determines that the defendant is incompetent, it shall order competency restoration treatment unless there is clear and convincing evidence that defendant will not regain competency within 15 months. The court shall determine whether the defendant should be subject to involuntary treatment and may extend the treatment for six months beyond the 15 month limit if it finds defendant is making progress toward restoration of competency. All treatment orders shall specify the place where treatment will occur; whether the treatment is inpatient or outpatient pursuant to A.R.S. § 13-4512(A); transportation to the treatment site; length of treatment; and transportation after treatment. The treatment order shall specify that the court shall be notified if the defendant regains competency before the expiration of the order of commitment.

c.-e. [No change in text.]

* * *

Rule 11.7. Privilege

a. General Restriction. No evidence of any kind obtained under these provisions shall be admissible at any proceeding to determine guilt or innocence unless the defendant presents evidence intended to rebut the presumption of sanity.

b. Privileged Statements of Defendant.

(1) No statement of the defendant obtained under these provisions, or evidence resulting therefrom, concerning the events which form the basis of the charges against the defendant shall be admissible at the trial of guilt or innocence, or at any subsequent proceeding to determine guilt or innocence, without his or her consent.

- (2) No statement of the defendant or evidence resulting therefrom obtained under these provisions, concerning any other events or transactions, shall be admissible at any proceeding to determine the defendant's guilt or innocence of criminal charges based on such events or transactions.
- (3) A statement of the defendant obtained under these provisions, or evidence resulting therefrom, may be used by any party in a hearing to determine whether the defendant is eligible for court-ordered treatment pursuant to Title 36, Chapter 5, or is a sexually violent person.